

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 44

HOUSE BILL 2279

AN ACT

AMENDING SECTIONS 28-4301, 28-4458 AND 28-4460, ARIZONA REVISED STATUTES;
RELATING TO MOTOR VEHICLE DEALER FRANCHISES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-4301, Arizona Revised Statutes, is amended to read:

28-4301. Definitions

In this chapter, unless the context otherwise requires:

1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary geographic territory for the purpose of marketing, promoting, selling and leasing new motor vehicles. In the absence of the factory designated area, the area of responsibility is that geographical area surrounding a dealer that lies closer to that dealer than to other dealers of the same line-make.

2. "Automotive recycler" means a person who is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and who dismantles six or more vehicles in a calendar year.

3. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.

4. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:

(a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.

(b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.

(c) A manufacturer or employee or agent of a manufacturer.

(d) An auctioneer or engaged in the auto auction business.

(e) A wholesale motor vehicle dealer.

5. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.

6. "Distributor" means a person who either:

(a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.

(b) Maintains distributor representatives in this state.

7. "Distributor branch" means a branch office maintained or availed of by a distributor for either:

(a) The sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

8. "Established place of business":

1 (a) Means a permanent enclosed building or structure that is owned
2 either in fee or leased with sufficient space to display two or more motor
3 vehicles of a kind and type that the dealer is licensed to sell and that is
4 devoted principally to the use of a motor vehicle dealer in the conduct of
5 the business of the dealer.

6 (b) In the case of a used motor vehicle dealer, trailer dealer or
7 semitrailer dealer:

8 (i) Need not be a permanent building or structure or part of a
9 permanent building or structure.

10 (ii) May be a vacant lot or part of a vacant lot.

11 (iii) Does not mean or include a residence, tent, temporary stand or
12 temporary quarters or permanent quarters occupied pursuant to a temporary
13 arrangement.

14 (c) In the case of an automotive recycler, means a permanent site or
15 location at which the business of an automotive recycler is or will be
16 conducted.

17 9. "Exhibitor" means a manufacturer of new motor homes that exhibits
18 new motor homes at a special event.

19 10. "Factory branch" means a branch office maintained or availed of by
20 a manufacturer for either:

21 (a) The sale of new motor vehicles to distributors or the sale of new
22 motor vehicles to new motor vehicle dealers in this state.

23 (b) Directing or supervising its representatives in this state.

24 11. "Financial institution" means a bank, trust company, savings and
25 loan association, credit union, consumer lender, international banking
26 facility or holding company that is licensed, regulated or insured by the
27 state banking department, the federal deposit insurance corporation, the
28 office of thrift supervision, the comptroller of the currency, the national
29 credit union share insurance fund or the national credit union
30 administration.

31 12. "Franchise" means a contract between two or more persons if all of
32 the following conditions are included:

33 (a) A commercial relationship of definite duration or continuing
34 indefinite duration is involved.

35 (b) The franchisee is granted the right to offer, sell and service in
36 this state new motor vehicles manufactured or distributed by the franchisor.

37 (c) The franchisee, as a separate business, constitutes a component
38 of the franchisor's distribution system.

39 (d) The operation of the franchisee's business is substantially
40 associated with the franchisor's trademark, service mark, trade name,
41 advertising or other commercial symbol designating the franchisor.

42 (e) The operation of the franchisee's business is substantially
43 reliant on the franchisor for the continued supply of new motor vehicles,
44 parts and accessories.

45 13. "Franchisee" means a person who both:

1 (a) Receives new motor vehicles from the franchisor under a franchise.
2 (b) Offers and sells to and services new motor vehicles for the
3 general public.

4 14. "Franchisor" means a person who both:

5 (a) Manufactures or distributes new motor vehicles.

6 (b) May enter into a franchise.

7 15. "Importer" means a person who transports or arranges for the
8 transportation of a foreign manufactured new motor vehicle into the United
9 States for sale in this state.

10 16. "Lead" means any retail consumer who SATISFIES ALL OF THE
11 FOLLOWING:

12 (a) RESPONDS TO A FACTORY-DIRECTED PROGRAM THAT OBTAINS CONSUMER
13 CONTACT INFORMATION AND THAT PROVIDES SUCH INFORMATION TO ONE OR MORE
14 DEALERS.

15 (b) Expresses any AN interest to the factory in purchasing, leasing or
16 acquiring ~~or possibly purchasing, leasing or acquiring~~ any vehicle or
17 product, service or financing AVAILABLE FROM THE DEALERS OF THAT
18 FACTORY. ~~and who~~

19 (c) Does not qualify for any reasonable factory sponsored factory
20 employee, factory retiree or factory vendor new vehicle purchase program or
21 any other reasonable similar factory related new vehicle purchase program.

22 17. "Line-make" means those motor vehicles that are offered for sale,
23 lease or distribution under a common name, trademark, service mark or brand
24 name of the manufacturer of those same motor vehicles.

25 18. "Major component part" includes a motor vehicle or vehicle part
26 that the manufacturer has assigned any factory, motor, serial or other
27 identification number or mark.

28 19. "Manufacturer" means any person who either:

29 (a) Manufactures or assembles new motor vehicles.

30 (b) Manufactures or installs on previously assembled truck chassis
31 special bodies or equipment that when installed forms an integral part of the
32 new motor vehicle and that constitutes a major manufacturing alteration,
33 excluding the installation of a camper on a pickup truck.

34 20. "Mobile medical clinic" means a motor vehicle retrofitted for
35 exclusive use as a medical office or clinic for medical services regulated
36 under title 32.

37 21. "Motor home" means a motor vehicle that is primarily designed as
38 temporary living quarters and that:

39 (a) Is built onto as an integral part of, or is permanently attached
40 to, a motor vehicle chassis.

41 (b) Contains at least four of the following independent life support
42 systems if each is permanently installed and designed to be removed only for
43 purposes of repair or replacement:

44 (i) A cooking facility with an on board fuel source.

45 (ii) A gas or electric refrigerator.

1 (iii) A toilet with exterior evacuation.

2 (iv) A heating or air conditioning system with an on board power or
3 fuel source separate from the vehicle engine.

4 (v) A potable water supply system that includes at least a sink, a
5 faucet and a water tank with an exterior service supply connection.

6 (vi) A 110-125 volt electric power supply.

7 22. "Motor vehicle" means an automobile, motor bus, motorcycle, truck
8 or truck tractor or any other self-propelled vehicle, trailer or semitrailer.

9 23. "Motor vehicle dealer" means a new motor vehicle dealer, a used
10 motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer,
11 excluding a person who comes into possession of a motor vehicle as an
12 incident to the person's regular business and who sells or exchanges the
13 motor vehicle.

14 24. "New house trailer dealer" means a person who buys, sells,
15 exchanges or offers or attempts to negotiate a sale or exchange of an
16 interest in, or who is engaged in the business of selling, new house trailers
17 or used house trailers taken in trade on new house trailers. For the
18 purposes of this paragraph, "house trailer" means a vehicle, other than a
19 motor vehicle, that is built on a chassis designed for being drawn on the
20 highways by a motor vehicle and that is designed for human habitation.

21 25. "New motor vehicle" means a motor vehicle, other than a used motor
22 vehicle, that is held either for:

23 (a) Sale by the franchisee who first acquired the vehicle from the
24 manufacturer or distributor of the vehicle.

25 (b) Sale by another franchisee of the same line-make.

26 26. "New motor vehicle dealer" means a person who buys, sells,
27 exchanges or offers or attempts to negotiate a sale or exchange of an
28 interest in, or who is engaged in the business of selling, new motor vehicles
29 or used motor vehicles taken in trade on new motor vehicles or used vehicles
30 purchased for resale.

31 27. "Off-premises display and sales" means a promotion or sale of motor
32 vehicles for a period of time as specified by the director that both:

33 (a) Is sponsored by a licensed motor vehicle dealer, the licensed
34 motor vehicle dealer's agents or the manufacturer.

35 (b) Takes place at a location within the same county but not at the
36 licensee's established place of business.

37 28. "Off-premises exhibition" means the exhibition of a motor vehicle
38 for a period of time as specified by the director at a location within the
39 same county but not at the established place of business of a licensed motor
40 vehicle dealer and at which a solicitation or sale does not occur.

41 29. "Provisional automotive recycler's license" means a license that
42 both:

43 (a) Is issued by the department only in conjunction with an
44 application for an automotive recycler's license.

1 (b) Permits the applicant or applicants to conduct the business of an
2 automotive recycler regulated by this chapter pending completion of the
3 criminal records check pursuant to section 28-4361.

4 30. "Provisional dealer's license" means a license that both:

5 (a) Is issued by the department only in conjunction with an
6 application for a dealer's license.

7 (b) Permits the applicant or applicants to conduct the business of a
8 motor vehicle dealer regulated by this chapter pending completion of the
9 criminal records check pursuant to section 28-4361.

10 31. "Retail consumer" means any person purchasing, leasing or acquiring
11 or possibly purchasing, leasing or acquiring a vehicle or product, service
12 or financing not for resale.

13 32. "Service" means any service that is sold, leased or provided to
14 retail consumers and that directly relates to the ownership or leasing of a
15 new or used motor vehicle, including extended service contracts or motor
16 vehicle warranty and nonwarranty repairs or maintenance, including both parts
17 and labor.

18 33. "Special event" means an exhibition of new motor homes by a motor
19 vehicle dealer licensed to sell new motor homes or an exhibitor for a period
20 of time specified by the director at a location in this state other than the
21 licensee's or exhibitor's established place of business.

22 34. "Used motor vehicle" means a motor vehicle that has been sold,
23 bargained, exchanged or given away or the title to the motor vehicle has been
24 transferred from the person who first acquired the vehicle from the
25 manufacturer, or importer, dealer or agent of the manufacturer or importer,
26 and that has been placed in bona fide consumer use. For the purposes of this
27 paragraph, "bona fide consumer use" means actual operation by an owner who
28 acquired a new motor vehicle both:

29 (a) For use in the owner's business or for pleasure or otherwise.

30 (b) For which a certificate of title has been issued or that has been
31 registered as provided by law.

32 35. "Used motor vehicle dealer" means a person, other than a new motor
33 vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate
34 a sale or exchange of an interest in, or who is engaged in the business of
35 selling, four or more used motor vehicles in a continuous twelve month
36 period. Used motor vehicle dealer does not include a person who buys, sells,
37 exchanges or offers or attempts to negotiate a sale of or exchange an
38 interest in a classic car as defined in section 28-2483 or a historic vehicle
39 as defined in section 28-2484.

40 36. "Wholesale motor vehicle auction dealer" means a person who both:

41 (a) Is in the business of providing auction services solely in
42 wholesale transactions to motor vehicle dealers licensed by this state or any
43 other jurisdiction.

44 (b) Does not buy, sell or own the motor vehicles the auction dealer
45 auctions in the ordinary course of business.

1 37. "Wholesale motor vehicle dealer" means a person who sells used
2 motor vehicles only to licensed motor vehicle dealers.

3 38. "Zone" means the geographic marketing area or district designated
4 by the franchisor and serviced by the franchisor's factory or distributor
5 branch.

6 Sec. 2. Section 28-4458, Arizona Revised Statutes, is amended to read:
7 28-4458. Coercion prohibited

8 A. A manufacturer of new motor vehicles, factory branch, distributor,
9 distributor branch, field representative, officer or agent or any
10 representative of a manufacturer of new motor vehicles, factory branch,
11 distributor, distributor branch, field representative, officer or agent shall
12 not coerce or attempt to coerce a new motor vehicle dealer to either:

13 1. Accept delivery of a new motor vehicle or vehicles, parts or
14 accessories for the vehicle or vehicles or any other commodities that the
15 dealer has not ordered.

16 2. Enter into an agreement with the manufacturer, factory branch,
17 distributor, distributor branch or representative of the manufacturer,
18 factory branch, distributor or distributor branch.

19 3. Do any other act unfair to the dealer by threatening to cancel or
20 not renew a franchise existing between the manufacturer, factory branch,
21 distributor, distributor branch or representative of the manufacturer,
22 factory branch, distributor or distributor branch and the dealer.

23 B. A manufacturer, factory branch, distributor, distributor branch or
24 field representative or an officer, agent or representative of a
25 manufacturer, factory branch, distributor, distributor branch or field
26 representative shall not require, coerce or attempt to coerce any new motor
27 vehicle dealer in this state to refrain from participation in the management
28 of, investment in or acquisition of any other line-make of new motor vehicle
29 or related products unless justified by reasonable business considerations.

30 C. A manufacturer, factory branch, distributor, distributor branch,
31 field representative or officer shall not coerce or attempt to coerce a motor
32 vehicle dealer and a manufacturer shall not DO EITHER OF THE FOLLOWING:

33 1. Release to any outside party any CONFIDENTIAL financial information
34 OF THE DEALER that may be provided from time to time by the dealer. to the
35 manufacturer without the express written consent of the dealer, except that
36 a manufacturer may release the information:

37 2. RELEASE TO THE GENERAL PUBLIC AVERAGE OR COMPOSITE PRICES,
38 IDENTIFIED AS SUCH, BASED IN WHOLE OR IN PART ON SUCH FINANCIAL INFORMATION.

39 D. INFORMATION DESCRIBED IN SUBSECTION C, PARAGRAPHS 1 AND 2 SHALL NOT
40 BE RELEASED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE DEALER, EXCEPT THAT
41 IT MAY BE RELEASED:

42 1. Pursuant to subpoena or as otherwise required by law in any
43 administrative, judicial or arbitration proceeding or in any law enforcement
44 investigation.

1 2. ~~Except personal financial information,~~ To a law enforcement agency,
2 PROVIDED, HOWEVER, THAT THIS EXCEPTION DOES NOT APPLY TO PERSONAL FINANCIAL
3 INFORMATION.

4 ~~D.~~ E. A manufacturer, importer or distributor shall not adopt,
5 change, establish or implement a plan or system for the allocation,
6 scheduling or delivery of new motor vehicles, parts or accessories to its
7 motor vehicle dealers that is not fair, reasonable and equitable or modify
8 an existing plan or system for the allocation, scheduling or delivery of new
9 motor vehicles, parts or accessories in a manner that causes the plan or
10 system to be unreasonable, unfair or inequitable. On the request of a
11 franchisee, a manufacturer, importer or distributor shall disclose in writing
12 to the franchisee the basis on which new motor vehicles, parts and
13 accessories are allocated, scheduled and delivered among the manufacturer's,
14 importer's or distributor's dealers of the same line-make.

15 Sec. 3. Section 28-4460, Arizona Revised Statutes, is amended to read:

16 28-4460. Factories; competition or unfair discrimination
17 prohibited; definitions

18 A. A factory shall not directly or indirectly compete with or unfairly
19 discriminate among its dealers.

20 B. Competing with or unfair discrimination includes any one of the
21 following:

22 1. The factory having an ownership interest or franchise interest in,
23 or operating or acting in the capacity of, a new motor vehicle dealer or a
24 used motor vehicle dealer, except that:

25 (a) A factory is not prohibited from owning or operating as a new
26 motor vehicle dealer for a temporary period of not more than twelve months
27 during the transition from one dealer to another dealer if the dealership is
28 for sale and is being actively marketed by the factory at a bona fide
29 reasonable price and on reasonable terms and conditions to any independent
30 qualified buyer. On good cause shown by the factory, the temporary period
31 may be extended by up to six months. For recreational vehicle manufacturers,
32 the temporary period may be extended in one year increments for a maximum
33 total extension of not more than five years, if good cause is shown.

34 (b) A factory is not prohibited from temporarily owning a dealership
35 while in a bona fide relationship with a qualified person. A bona fide
36 relationship with a person who is qualified requires that:

37 (i) The total sales price of the dealership is not less than an amount
38 that is consistent with standard business practices.

39 (ii) The independent qualified person make a substantial unencumbered
40 bona fide initial investment in the dealership that is reasonable and
41 consistent with standard business practices.

42 (iii) The bona fide initial investment of the qualified person is
43 subject to potential loss. The qualified person's percentage share of any
44 potential dealership losses shall not be less than the person's percentage
45 share of ownership of the dealership at the time of the loss.

1 (iv) The qualified person buy substantial portions of the factory's
2 remaining ownership interest in substantial regular periodic payments
3 throughout the acquisition period.

4 (v) The qualified person can expect to acquire and retain full and
5 complete ownership of the dealership within a reasonable period of time that
6 is not longer than ten years and on reasonable terms and conditions that are
7 consistent with standard business practices. The ten year acquisition period
8 may be extended for good cause shown by the qualified person.

9 (vi) During the acquisition period if the qualified person is paid a
10 management fee, the management fee shall be reasonable and consistent with
11 standard business practices for an individual managing a franchise of similar
12 size and volume of sales and leases of vehicles or products.

13 (c) A factory is not prohibited from owning on a permanent basis a
14 minority interest in a dealership if all of the following conditions are
15 satisfied:

16 (i) The interest owned by the factory is not more than forty-five per
17 cent or the percentage interest actually owned by the factory on January 1,
18 2000, whichever is less.

19 (ii) Any dealership in which the factory owns the interest shall not
20 be less than seventy-five miles from the nearest dealership of the same
21 line-make in which the factory does not own the interest.

22 (iii) All dealerships in which the factory owns the interest shall not
23 sell or lease more than one of the line-makes of new motor vehicles and parts
24 manufactured by the factory.

25 (iv) All dealerships in which the factory owns the interest shall sell
26 or lease the same line-make of new motor vehicles and parts manufactured by
27 the factory. The dealerships may also sell or lease new motor vehicles and
28 parts of a line-make manufactured by a factory that does not have an
29 ownership interest in the dealership.

30 (v) The factory or an entity in which the factory has the interest
31 must have been licensed in this state as a new motor vehicle dealer on
32 January 1, 2000 selling the line-make of new motor vehicle manufactured by
33 the factory.

34 (vi) The factory must have owned the interest in at least one
35 dealership selling the line-make manufactured by the factory on January 1,
36 2000.

37 (vii) The factory or an entity in which the factory has the interest
38 shall not sell any line-make of new motor vehicle that it was not selling in
39 this state before January 1, 2000.

40 (viii) All automotive related services and financing related to the
41 line-make or the factory owning the interest shall be sold or provided only
42 to owners of vehicles of the line-make, regardless of where the vehicle was
43 purchased, or to any purchasers of any new or used motor vehicles purchased
44 from a dealership in which the factory has an interest. This item shall not
45 preclude that dealership from selling or providing any nonwarranty repairs

1 or maintenance on motor vehicles of any line-make or warranty repairs or
2 maintenance of any line-make of new motor vehicles sold by the dealership and
3 not manufactured by the factory.

4 (ix) All used motor vehicles of a line-make manufactured by the
5 factory, other than the line-make that the dealership sells or leases new,
6 acquired by the dealership, directly or indirectly from the factory, shall
7 be acquired only at wholesale auction open to dealers of all line-makes
8 manufactured by the factory.

9 2. The factory selling, leasing or providing, or offering to sell,
10 lease or provide, vehicles A VEHICLE or products PRODUCT, services SERVICE
11 or financing to any retail consumer or lead. This paragraph does not:

12 (a) Prohibit a factory from advertising to sell, lease or provide
13 vehicles A VEHICLE or products PRODUCT, services SERVICE or financing through
14 its dealers.

15 (b) Prohibit a factory from selling, leasing or providing or offering
16 to sell, lease or provide vehicles A VEHICLE or products PRODUCT, services
17 SERVICE or financing through its dealers.

18 (c) Prohibit a factory from providing vehicles A VEHICLE OR PRODUCT
19 OR SERVICE for occasional promotional or charitable uses.

20 (d) Prohibit a factory from selling, leasing or providing vehicles A
21 VEHICLE or products PRODUCT, services SERVICE or financing to an agency of
22 the federal government.

23 (e) Prohibit a factory from selling or leasing vehicles A VEHICLE or
24 products PRODUCT, services SERVICE or financing through its dealers to retail
25 consumers who qualify for any reasonable factory sponsored factory employee,
26 factory retiree or factory vendor new vehicle purchase program or any other
27 reasonable similar factory related new vehicle purchase program.

28 (f) Prohibit a factory from providing financing to retail consumers
29 through any used motor vehicle dealer or new motor vehicle dealer of any
30 line-make.

31 (g) Prohibit a factory from providing a loan directly to a person or
32 entity if the loan is for a purpose unrelated to the ownership or leasing of
33 a new motor vehicle or a used motor vehicle not for resale.

34 (h) Prohibit a factory from providing loans directly to used motor
35 vehicle dealers or new motor vehicle dealers of any line-make for any
36 purpose, including working capital, real estate, construction or motor
37 vehicle or parts inventories.

38 (i) PROHIBIT A FACTORY FROM ARRANGING OR PROVIDING EMERGENCY ROADSIDE
39 SERVICE.

40 (j) PROHIBIT A FACTORY FROM OFFERING FACTORY SPONSORED EXTENDED
41 SERVICE CONTRACTS TO PURCHASERS OF NEW MOTOR VEHICLES, PROVIDED THAT:

42 (i) SUCH OFFERS SHALL NOT TAKE PLACE LESS THAN NINETY DAYS AFTER THE
43 DATE THE RETAIL CONSUMER TAKES DELIVERY OF THE NEW MOTOR VEHICLE.

44 (ii) SUCH OFFERS ARE MADE TO RETAIL CONSUMERS ONLY AT THE
45 MANUFACTURER'S SUGGESTED RETAIL PRICE.

1 (k) PROHIBIT A FACTORY FROM SELLING A LEASE VEHICLE TO THE ORIGINAL
2 LESSEE PURSUANT TO A PURCHASE OPTION SET FORTH IN THE LEASE. SUCH SALE MAY
3 BE A CREDIT SALE WITH THE FACTORY AS THE CREDIT SELLER AND MAY INCLUDE THE
4 DIRECT SALE OF EXTENDED SERVICE CONTRACTS AT THE MANUFACTURER'S SUGGESTED
5 RETAIL PRICE.

6 (l) PROHIBIT A FACTORY, AT THE REQUEST OF A MOTOR VEHICLE LESSEE, FROM
7 EXTENDING A LEASE OF A MOTOR VEHICLE.

8 (m) PROHIBIT A FACTORY FROM OFFERING AND APPROVING A RETAIL CONSUMER
9 CREDIT APPLICATION FOR THE FINANCING OR LEASING OF A MOTOR VEHICLE PROVIDED
10 THAT BOTH OF THE FOLLOWING APPLY:

11 (i) THE FINAL TRANSACTION TAKES PLACE THROUGH A LICENSED MOTOR VEHICLE
12 DEALER.

13 (ii) THE FACTORY DOES NOT ESTABLISH OR QUOTE ANY INTEREST RATE,
14 FINANCE RATE OR LEASE RATE IN ASSOCIATION WITH A CREDIT APPLICATION.

15 (n) PROHIBIT A FACTORY FROM RENEWING OR CHARGING ANY SUBSCRIPTION OR
16 CONNECTION FEES FOR ANY IN-VEHICLE ELECTRONIC WIRELESS COMMUNICATION,
17 INFORMATION OR ENTERTAINMENT SERVICES.

18 3. The factory controlling any aspect of the final amount charged, the
19 final sales price or the final lease price for any of ~~the vehicles~~ VEHICLE
20 or ~~products~~ PRODUCT, ~~trade-ins, services or financing~~ TRADE-IN OR SERVICE
21 offered, ~~offered for sale or offered for lease~~ to retail consumers in a
22 dealer's area of responsibility without the written consent of the dealer.
23 The dealer's consent may be withdrawn on thirty FORTY-FIVE days' notice
24 without retribution or the threat of retribution from the factory. This
25 paragraph does not prohibit a factory from:

26 (a) Changing dealer cost or establishing ANY OF THE FOLLOWING:

27 (i) Manufacturer's suggested retail price pursuant to 15 United States
28 Code section 1232.

29 (ii) FACTORY'S SUGGESTED RETAIL PRICE FOR PARTS.

30 (iii) FACTORY'S SUGGESTED RETAIL PRICE FOR SERVICE.

31 (b) Establishing from time to time reasonable sales, lease or
32 financing promotions of reasonable and limited duration, PROVIDED THAT
33 PROGRAMS UP TO A YEAR ARE PRESUMED TO BE OF REASONABLE AND LIMITED DURATION.

34 (c) Establishing reasonable standard feature option packages or
35 vehicle option content in any way.

36 (d) Establishing the terms of any vehicle warranty.

37 (e) Establishing reasonable sales, lease or financing terms through
38 its dealers to retail consumers who qualify for any reasonable factory
39 sponsored factory employee, factory retiree or factory vendor new vehicle
40 purchase program or any other reasonable similar factory related new vehicle
41 purchase program.

42 (f) LINKING THE FACTORY'S INTERNET SITE TO INTERNET SITES MAINTAINED
43 BY ITS DEALERS OR THIRD PARTIES, OR TO INTERNET SITES MAINTAINED JOINTLY BY
44 THE FACTORY AND ITS DEALERS AND MADE AVAILABLE TO ALL OF THE FACTORY'S
45 DEALERS OF THE SAME LINE-MAKE, PROVIDED THAT THE FACTORY SHALL NOT DICTATE,

1 LIMIT, ESTABLISH, SET OR ENDORSE AS A BASIS FOR A RETAIL TRANSACTION ANY
2 PRICE OTHER THAN THE MANUFACTURER'S SUGGESTED RETAIL PRICE.

3 (g) ESTABLISHING THE PRICE AT WHICH THE LESSEE OF A MOTOR VEHICLE MAY
4 PURCHASE OR RE-LEASE THAT MOTOR VEHICLE ON EXPIRATION OR TERMINATION OF THAT
5 LESSEE'S LEASE.

6 (h) OPERATING OR FACILITATING A PROGRAM OR SYSTEM THROUGH WHICH
7 INDIVIDUAL DEALERS MAY PROVIDE QUOTES OR OFFERS TO INDIVIDUAL CONSUMERS.

8 4. The factory refusing to unconditionally offer and provide to its
9 same line-make dealers all models, or series manufactured and EDITIONS OF NEW
10 MOTOR VEHICLES THAT ARE publicly advertised for that line-make IN ARIZONA.
11 ~~at prices that are, or by the effect of any device or program at prices that~~
12 ~~are, no greater than any other dealer in the United States would pay for the~~
13 ~~same model vehicle that is similarly equipped.~~ The failure to deliver any
14 NEW motor vehicles shall not be considered a violation of this paragraph if
15 the failure is caused by a LACK OF MANUFACTURING CAPACITY, LABOR STRIKE,
16 SHORTAGE OF MATERIALS OR TRADE EMBARGO OR ANY OTHER condition over which the
17 factory has no control. A factory may require a dealer to purchase
18 reasonable quantities of advertising materials, purchase reasonable
19 quantities of special tools required to properly service a motor vehicle and
20 undertake reasonable salesperson or service person training related to the
21 motor vehicle as a condition of receiving a motor vehicle. This paragraph
22 does not:

23 (a) Apply to recreational vehicle manufacturers.

24 ~~(b) Prohibit a factory from establishing from time to time reasonable~~
25 ~~sales, lease or financing promotions of reasonable and limited duration.~~

26 ~~(c)~~ (b) Prohibit a factory from providing monetary, financial or
27 optional equipment incentives to fleet purchasers for new motor vehicles not
28 for resale.

29 ~~5. The factory providing or directing less than all leads of~~
30 ~~prospective retail consumers of vehicles or products, services or financing~~
31 ~~of a particular line-make to the dealer of the same line-make in whose~~
32 ~~assigned area of responsibility the lead resides or, in the event of a~~
33 ~~commercial lead, the primary local business address. The factory is only~~
34 ~~responsible for providing to the dealer information that it possesses~~
35 ~~concerning the lead. The factory is not precluded from providing or~~
36 ~~directing leads to other dealers of the same line-make. All leads shall be~~
37 ~~provided or directed in a fair, nondiscriminatory, equitable and timely~~
38 ~~manner and without charging a fee for those leads.~~

39 5. THE FACTORY DENYING TO ANY DEALER ANY PRICE REDUCTION, REBATE,
40 INCENTIVE PAYMENT OR SIMILAR PRICING DEVICE RELATING TO THE SALE OR OFFER TO
41 SELL A NEW MOTOR VEHICLE TO A DEALER, PURSUANT TO A PROGRAM THAT
42 DISCRIMINATES AMONG DEALERS OF THE SAME LINE-MAKE IN ARIZONA, WHEN THE DEALER
43 CANNOT QUALIFY OR RECEIVE THE BENEFITS OF THE PROGRAM FOR REASONS OTHER THAN
44 THE DEALER'S FAILURE TO USE REASONABLE EFFORT TO QUALIFY AND THE TERMS OF THE

1 PROGRAM ARE SUCH THAT A FAILURE TO QUALIFY OR RECEIVE ITS BENEFITS WOULD
2 CONSTITUTE THE CONSTRUCTIVE TERMINATION OF THE DEALER.

3 6. THE FACTORY FAILING TO PROVIDE OR DIRECT A LEAD RELATING TO A
4 PARTICULAR LINE-MAKE EITHER:

5 (a) TO THE DEALER WITH WHOM THE LEAD HAS A PREEXISTING RELATIONSHIP.

6 (b) TO THE DEALER OF THE SAME LINE-MAKE THAT IS LOCATED CLOSEST TO
7 WHERE THE LEAD RESIDES, OR TO THE LOCAL BUSINESS ADDRESS IF THE LEAD IS A
8 BUSINESS.

9 (c) TO THE DEALER OF THE SAME LINE-MAKE IN WHOSE ASSIGNED AREA OF
10 RESPONSIBILITY THE LEAD RESIDES, OR THE LOCAL BUSINESS ADDRESS IF THE LEAD
11 IS A BUSINESS.

12 (d) ACCORDING TO THE LEAD'S VOLUNTARY PREFERENCE.

13 C. UNDER SUBSECTION B, PARAGRAPH 6:

14 1. THE FACTORY NEED NOT PROVIDE OR DIRECT A LEAD TO A DEALER WHO DOES
15 NOT SELL THE VEHICLE OR PRODUCT, SERVICE OR FINANCING IN WHICH THE LEAD
16 EXPRESSES AN INTEREST.

17 2. THE FACTORY IS RESPONSIBLE ONLY FOR PROVIDING TO THE DEALER
18 INFORMATION THAT IT POSSESSES CONCERNING THE LEAD.

19 3. THE FACTORY IS NOT PRECLUDED FROM PROVIDING OR DIRECTING LEADS TO
20 ANY OTHER DEALER OF THE SAME LINE-MAKE.

21 4. ALL LEADS SHALL BE PROVIDED OR DIRECTED IN A FAIR,
22 NONDISCRIMINATORY, EQUITABLE AND TIMELY MANNER TO DEALERS AND, EXCEPT AS
23 PROVIDED IN SUBSECTION D, WITHOUT CHARGING A FEE FOR THOSE LEADS.

24 D. SUBSECTION B, PARAGRAPH 6 DOES NOT APPLY TO ANY FACTORY SPONSORED
25 INTERNET-BASED PROGRAM SPECIFICALLY DESIGNED TO PROVIDE RETAIL CONSUMERS WITH
26 INTERNET ACCESS TO DEALER QUOTATIONS ON VEHICLES, PRODUCTS, FINANCING OR
27 SERVICES, PROVIDED THAT:

28 1. FEES FOR THE PROGRAM ARE REASONABLE AND CONSISTENT WITH INDUSTRY
29 STANDARDS.

30 2. DEALER PARTICIPATION IS NOT CONDITIONED ON PARTICIPATION IN ANY
31 OTHER PROGRAM OR ON RATINGS DERIVED FROM CUSTOMER SURVEYS.

32 E. For the purposes of this section:

33 1. "Controlling" means dictating, limiting, establishing, setting or
34 influencing through any means ENDORSING AS A BASIS FOR A RETAIL TRANSACTION
35 ANY PRICE OTHER THAN THE MANUFACTURER'S SUGGESTED RETAIL PRICE.

36 2. "Dealer" or "dealership" means a new motor vehicle dealer or
37 franchisee.

38 3. "Factory":

39 (a) Means a distributor, distributor branch, factory branch,
40 franchisor, importer or manufacturer, IMPORTER OR DISTRIBUTOR OR ANY LEGAL
41 ENTITY IN WHICH A MANUFACTURER, IMPORTER OR DISTRIBUTOR OWNS A MAJORITY
42 INTEREST OR HAS DIRECT OR INDIRECT POWER TO DIRECT OR CAUSE THE DIRECTION OF
43 THE MANAGEMENT WHETHER THROUGH VOTING SECURITIES, CONTRACT OR OTHERWISE.

44 (b) Includes agents and wholly or partially owned affiliates,
45 representatives and subsidiaries of a distributor, distributor branch,

1 ~~factory branch, franchisor, importer or manufacturer that have a direct~~
2 ~~relationship to the sale, leasing or providing of new motor vehicles, used~~
3 ~~motor vehicles, parts, accessories, services or financing to retail~~
4 ~~consumers.~~

5 (c) (b) Excludes any new motor vehicle dealer, used motor vehicle
6 dealer or trailer manufacturer.

7 (d) (c) Excludes any agent, affiliate, representative or subsidiary
8 that is primarily engaged in the business of rental of passenger and
9 commercial motor vehicles and industrial and construction equipment and
10 activities incidental to that business if all of the following conditions are
11 satisfied:

12 (i) Passenger and commercial motor vehicles sold by the agent,
13 affiliate, representative or subsidiary are limited to used passenger and
14 commercial motor vehicles that have been previously used exclusively and
15 regularly by the agent, affiliate, representative or subsidiary in the
16 conduct of business and used passenger and commercial motor vehicles traded
17 in on motor vehicles sold by the agent, affiliate, representative or
18 subsidiary.

19 (ii) Warranty repairs performed by the agent, affiliate,
20 representative or subsidiary on passenger and commercial motor vehicles are
21 limited to those passenger and commercial motor vehicles that it owns,
22 previously owned or takes in trade.

23 (iii) Motor vehicle financing provided by the agent, affiliate,
24 representative or subsidiary to retail consumers for passenger and commercial
25 motor vehicles is limited to vehicles sold by the agent, affiliate,
26 representative or subsidiary in the conduct of business.

27 4. "Financing":

28 (a) Means the financial service of providing retail consumers the
29 ability to pay for a purchase or lease of a new or used motor vehicle, parts
30 or services over an extended period of time.

31 (b) DOES NOT INCLUDE THE FURNISHING OF CREDIT CARDS CAPABLE OF GENERAL
32 USE IN RETAIL TRANSACTIONS OR THE PROVISION OF ANY LOANS SECURED BY REAL
33 ESTATE.

34 5. "Parts":

35 (a) Means ~~motor vehicle related parts or accessories~~ ALL ITEMS THAT
36 ARE DESIGNED TO BE INCORPORATED WITHIN OR ATTACHED TO OR USED TO OPERATE,
37 MAINTAIN OR SERVICE A MOTOR VEHICLE.

38 (b) DOES NOT INCLUDE ANY OF THE FOLLOWING:

39 (i) PARTS PURCHASED OR PROVIDED FOR USE BY PROFESSIONAL RACING
40 ENTERPRISES.

41 (ii) PARTS NO LONGER INCLUDED IN THE CURRENT FACTORY PRICE SCHEDULE.

42 (iii) SPECIALIZED PARTS FOR RESEARCH VEHICLES OR OTHER SIMILAR USES
43 OF LIMITED APPLICATION.

44 (iv) OWNERS' MANUALS OR REPAIR MANUALS.

1 (v) PARTS THAT ARE PROVIDED BY AN AUTOMOTIVE RECYCLER IN THE NORMAL
2 COURSE OF BUSINESS FOR AN AUTOMOTIVE RECYCLER.

3 (vi) MOTOR VEHICLE KEYS.

4 6. "SERVICE" MEANS EITHER OF THE FOLLOWING:

5 (a) MOTOR VEHICLE WARRANTY AND NONWARRANTY REPAIRS OR MAINTENANCE,
6 INCLUDING BOTH PARTS AND LABOR.

7 (b) EXTENDED WARRANTIES, VEHICLE MECHANICAL MAINTENANCE INSURANCE AND
8 SIMILAR VEHICLE REPAIR SERVICE CONTRACTS.

9 ~~6. 7. "Vehicle or product" means a new or used motor vehicle, A USED~~
10 ~~MOTOR VEHICLE OR parts or any other goods sold, leased or provided to retail~~
11 ~~consumers and directly related to the ownership or leasing of a new or used~~
12 ~~motor vehicle.~~

APPROVED BY THE GOVERNOR APRIL 17, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2002.

Passed the House February 12, 2002

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

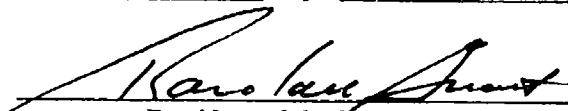

Speaker of the House

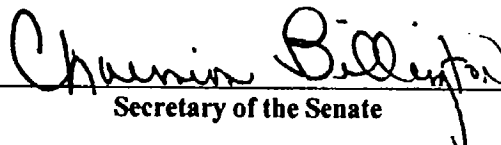

Chief Clerk of the House

Passed the Senate April 10, 2002

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting


President of the Senate

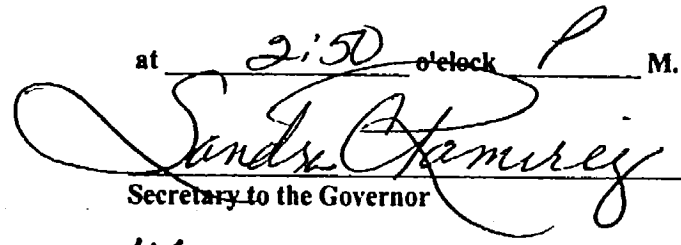

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

11 day of April, 2002

at 2:50 o'clock P M.


Secretary to the Governor

Approved this 17 day of

April, 2002,

at 4:32 o'clock P M.

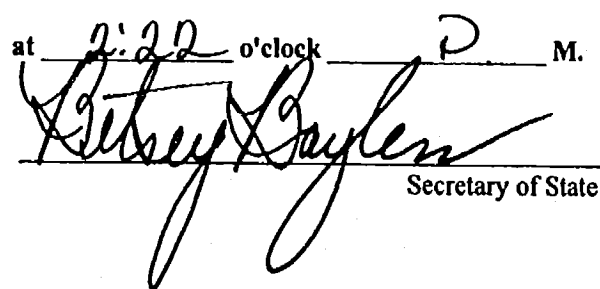

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18th day of April, 2002

at 2:22 o'clock P M.


Secretary of State

H.B. 2279